

² The Board notes that, following the December 14, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

disability or residuals causally related to her accepted February 21, 2006 employment injury; (2) whether appellant has established that she had continuing disability or residuals on or after December 3, 2020 causally related to her accepted February 21, 2006 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On March 22, 2006 appellant, then a 41-year-old nursing assistant, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome (CTS) due to factors of her federal employment, including pushing, pulling, transporting, and lifting patients. She noted that she first became aware of her condition and its relationship to her federal employment on February 21, 2006. Appellant underwent a right carpal tunnel release on July 12, 2006. OWCP accepted appellant's claim for bilateral CTS on January 15, 2009.

On July 22, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination and evaluation with Dr. Chason Hayes, a Board-certified orthopedic surgeon. It requested that Dr. Hayes evaluate whether appellant continued to have residuals or disability due to the accepted February 21, 2006 employment injury.

In an August 19, 2020 report, Dr. Hayes discussed appellant's factual and medical history and reported his findings on physical examination. He noted that appellant had last undergone an electromyogram/nerve conduction velocity (EMG/NCV) study on October 10, 2014, which was consistent with severe bilateral peripheral polyneuropathy, probably related to her insulin-dependent diabetes. On physical examination Dr. Hayes observed that appellant's wrists had no abnormal findings, that her scar was well healed, she had no swelling, and full range of motion. He also observed that she was uncooperative with the sensory examination. Dr. Hayes opined that appellant's work-related CTS had resolved following surgery and that she had no residuals. He further opined that appellant was capable of working her date-of-injury position. Dr. Hayes explained that appellant had residuals from unrelated medical conditions such as cervical radiculopathy and peripheral neuropathy from diabetes, but that, with regard to the accepted work condition, there was no medical contraindication to her returning to full-duty employment.

On October 23, 2020 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits based on Dr. Hayes' opinion that the February 21, 2006 accepted condition had ceased without residuals or disability. It afforded her 30 days to submit additional evidence of argument challenging the proposed termination.

In a response dated November 11, 2020, appellant replied to OWCP's notice of proposed termination, stating that she did not understand why her claim was being terminated when she still had medical problems. In an attached letter dated March 5, 2020, Dr. Katherine Butler, an

³ Docket No. 10-1201 (issued January 4, 2011); Docket No. 09-2166 (issued May 12, 2010); Docket No. 07-1559 (issued November 7, 2007).

orthopedic surgeon, opined that appellant had recurrent bilateral CTS, noting that she had previously been treated by another physician for bilateral CTS due to repetitive work activities. She explained that appellant's recurrence was likely due to scar tissue formation at the surgical site and, therefore, could be considered related to her initial injury. In a letter dated June 24, 2020, Dr. Butler explained that she had begun seeing appellant as a patient in 2020. She diagnosed bilateral carpal tunnel syndrome, noting that it was supported by physical examination, NCV studies, and medical reports. Dr. Butler stated that appellant's symptoms appeared to be consistent and that she had reached maximum medical improvement (MMI). She noted that appellant had previously undergone bilateral CTS surgery, but continued to have numbness, burning, pain, and weakness in her hands, which prevented her from returning to employment. Dr. Butler opined that it was reasonable to assume, based on documentation, that appellant had bilateral CTS attributable to work and that she has been persistently unable to return to work due to this injury.

In a letter dated July 15, 2020, Dr. Benjamin Ott, a Board-certified family practitioner, opined that appellant had chronic bilateral CTS due to repetitive work activities in her federal employment as of February 21, 2006. He explained that her persistent symptoms were likely due to scar tissue formation related to previous treatment and that she was permanently disabled from all occupations due to this injury.

Appellant also attached a progress report from Dr. William Mason, a Board-certified orthopedic surgeon, dated November 29, 2006, in which he opined she was unable to work.

In a note dated November 27, 2020, Dr. Ott indicated that he had seen appellant regularly every three to four months since prior to 2011. He noted that he regularly discussed her ongoing issues with CTS and nerve damage at her appointments, including in 2019 and 2020.

By decision dated December 2, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective December 3, 2020, based on Dr. Hayes' second opinion report.

On December 10, 2020 appellant requested reconsideration. With her request, she submitted an EMG/NCV study dated March 3, 2020.

By decision dated December 14, 2020, OWCP denied modification the of the December 2, 2020 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

⁴ See *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 3, 2020.

In his August 19, 2020 report, Dr. Hayes discussed appellant's factual and medical history and reported the findings of his physical examination. On physical examination of appellant's wrists, he observed normal findings, including that appellant's scar was well healed, she had no swelling, and full range of motion. Dr. Hayes opined that appellant's work-related CTS had resolved after surgery and that she had no residuals. He related that he had reviewed appellant's October 10, 2014 EMG study, which he related was consistent with severe bilateral peripheral polyneuropathy. While he opined that this finding was "probably" related to appellant insulin-dependent diabetes, Dr. Hayes offered no rationale in support of his opinion. His opinion regarding the cause of appellant's severe bilateral peripheral polyneuropathy was speculative in nature. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.⁹ The Board also notes that, while Dr. Hayes found that the 2014 EMG revealed severe bilateral median nerve studies, he did not obtain further diagnostic studies to confirm whether appellant's condition had resolved. Dr. Hayes concluded that appellant had residuals from unrelated medical conditions such as cervical radiculopathy and peripheral neuropathy from diabetes, but he offered no medical rationale, supported by objective findings, regarding the cause of appellant's continued residuals. The Board has held that a medical opinion is of limited probative value if it contains a conclusion regarding a given medical matter, which is unsupported by medical rationale.¹⁰

⁵ See *R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ See *R.P., supra* note 4; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ See *R.P., supra* note 4; *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ See *R.P., supra* note 4; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

⁹ *M.G.*, Docket No. 21-0747 (issued October 15, 2021).

¹⁰ See *P.C.*, Docket No. 20-0371 (issued January 26, 2021); *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *E.R.*, Docket No. 15-1046 (issued November 12, 2015); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

As Dr. Hayes' August 19, 2020 report was insufficiently rationalized and of diminished probative medical value in establishing that appellant's accepted bilateral carpal tunnel conditions had resolved, OWCP improperly determined that it constituted the weight of the medical evidence. The Board therefore finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits.¹¹

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 3, 2020.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 30, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.